

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

KYANTI WEST,

Defendant and Appellant.

B213400

(Los Angeles County
Super. Ct. No. BA342759)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Marcelita V. Haynes, Judge. Affirmed.

Laura C. Fry, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Kyanti West appeals from the judgment entered following a jury trial which resulted in his conviction of possession of cocaine base (Health & Saf. Code, § 11350, subd. (a)), and his admission that he previously had been convicted of a felony within the meaning of the Three Strikes law (Pen. Code, §§ 667, subs. (b)-(i), 1170.12, subs. (a)-(d)) and had served two prison terms (Pen. Code, § 667.5, subd. (b)). The trial court sentenced West to four years in prison. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

1. Facts.

Shortly after 9:00 p.m. on June 26, 2008, Los Angeles Police Officer Alfred Garcia and his partner, Officer Sharlton Wampler, were on “crime suppression patrol” in a marked patrol car in a residential area near 163 East 65th Street in Los Angeles. Officer Garcia was driving the patrol car and Officer Wampler was the passenger. As they drove by, Garcia and Wampler saw West standing on the front porch of the house. Garcia had focused his attention on the house because “numerous arrests [for everything from the unlawful possession of weapons to the possession of narcotics had been] made at that location” and at the house directly across the street. The officer had also seen narcotics ranging from marijuana to cocaine being sold there. As the officers drove past, West was standing on the front porch approximately five feet from another man, Owens, who was seated in a “sofa chair.”

Garcia stopped the car and, using his side door light, illuminated the porch. Garcia and Wampler then saw West look directly at them as he tossed a plastic bindle approximately three to five feet to his left side with his left hand. After seeing West toss the bindle, Garcia stopped and parked the patrol car. He and Wampler got out of the car, approached the house and ordered West and Owens to come down off the porch. The two men complied with the order and were detained by the officers in front of the house. While Wampler detained West and Owens, Garcia approached the house. From the front porch Garcia recovered a small plastic bag which was later determined to contain approximately 1.60 grams of a substance containing cocaine base. After recovering the

baggie, Garcia and Wampler questioned West and Owens. Owens was ultimately released. The officers placed West under arrest and transported him to the police station.

Garcia had had contact with West on “dozens” of prior occasions. However, on June 26 he was not looking for West in particular. The officers were in the area looking for drug users and sellers. Garcia had no personal vendetta against West. No use of force was used. West was “cooperative during the whole investigation.”

2. Procedural History.

Following a preliminary hearing, on July 29, 2008, West was charged by information with possession of cocaine base in violation of Health and Safety Code section 11350, subdivision (a). It was further alleged that West previously had been convicted of two felonies for which he served prison terms within the meaning of Penal Code section 667.5, subdivision (b). Finally, it was alleged West previously had suffered a felony conviction within the meaning of the Three Strikes law (Pen.Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

On July 30, 2008, West made a motion pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*) for discovery of any complaints filed against either of the two arresting officers and for any “exculpatory or impeaching [evidence] within the meaning of *Brady v. Maryland* (1963) 373 U.S. 83.” Among other points, West alleged he had “known [O]fficer Garcia for a very long time, and recently earned a ‘not guilty’ verdict in a federal trial where [O]fficer Garcia [had been] the arresting officer.” West continued, “Due to the ‘not guilty’ verdict, [O]fficer Garcia hates the defendant, and continually harasses the defendant whenever possible. On this occasion, defendant was standing on his porch with his friend. Officer Garcia and his partner pulled up, and immediately detained the defendant. Officer Garcia searched the defendant, and a car that was near the defendant, but did not belong to the defendant. No contraband was recovered. The officers then arrested the defendant, telling him that he was being arrested for a probation violation. The next thing the defendant knew, he was being

charged with possession of cocaine. The defendant was not in possession of cocaine at anytime that day.” (Emphasis in original omitted.)

On September 8, 2008, the trial court conducted an in camera hearing regarding West’s *Pitchess* and *Brady* motions. The trial court found “discoverable information” and ordered it provided to defense counsel on or before 4:30 p.m. on September 12, 2008.

The matter was called for a jury trial on September 17, 2008, but was continued to October 7, 2008 in accordance with defense counsel’s motion to continue trial in view of the *Pitchess* discovery received. A pre-trial conference was held on October 7, 2008. On October 22, the trial court heard and denied West’s *Marsden*¹ motion. In order to allow the People to issue subpoenas, jury trial was set to begin on January 5, 2009.

On January 6, 2009, a question arose as to whether a juror had overheard a comment made by one of the People’s witnesses. Outside the presence of the rest of the jurors, the juror in question indicated she had not heard the comment as she had been talking on her cell phone at the time. Counsel then stipulated that the juror should be left on the panel.

After the prosecution concluded its case, defense counsel made a motion to dismiss pursuant to Penal Code section 1118.1. The trial court denied the motion and the defense rested without presenting any evidence. After being instructed and listening to argument, the jury retired to deliberate. The following day, January 8, 2009, the jury found West guilty of possession of cocaine base in violation of Health and Safety Code section 11350, subdivision (a).

West admitted previously having been convicted of a felony within the meaning of the Three Strikes law and that he had served two prison terms within the meaning of Penal Code section 667.5, subdivision (b). The trial court sentenced West to the mid-term of two years in prison for his conviction of possession of cocaine base, then doubled the term to four years pursuant to the Three Strikes law. The trial court dismissed in

¹ *People v. Marsden* (1970) 2 Cal.3d 118.

furtherance of justice the two prior prison terms (Pen. Code, § 1385). West was granted presentence custody credit for 197 days actually served and 98 days of good time/work time, for a total of 295 days. West was ordered to pay a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), a suspended \$200 parole revocation restitution fine (Pen. Code, § 1202.45), a \$20 court security fee (Pen. Code, § 1465.8, subd. (a)(1)) and a \$50 lab analysis fee (Health & Saf. Code, § 11372.5).

West filed a timely notice of appeal on January 9, 2009.

This court appointed counsel to represent West on appeal on March 24, 2009.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed May 19, 2009, the clerk of this court advised West to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.